

**TOWN OF GRAFTON REGULATION
PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES**

SECTION 1

The purpose of this Regulation is to protect the health of the employees and general public in the Town of Grafton.

SECTION 2

This regulation is promulgated under the authority granted to the Town of Grafton Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

SECTION 3

As used in this regulation, the words below shall have the following meanings, unless the context requires otherwise:

Bar/Lounge: any free standing establishment which is primarily dedicated to the serving of alcoholic beverages for the consumption of guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Business: any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where services are delivered.

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic Nicotine Delivery Product, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether

public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Grafton.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Municipal Building: any building owned, occupied or leased by the Town of Grafton

Non-Profit Agency: any individual, partnership, corporation or other entity that provides goods or services on a not-for-profit basis.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Private Clubs (also known as Membership Association): a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under Chapter 180; or (iii) an established religious place of worship or instruction in the Commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

Public Places: area that is used by or otherwise accessible by the general public.

Retail tobacco store: an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Grafton Board of Health.

Restaurant: any coffee shop, cafeteria, mobile food establishment, private or school cafeteria, and any other eating establishment including bar/lounge areas of dining establishments which gives or offers food for sale to the public, guests or employees as well as kitchens in which food is prepared on the premises for serving elsewhere,

including catering facilities, except that the term "restaurant" shall not include a "bar/lounge" as defined in these regulations.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Town-Owned Vehicles: any vehicle owned or leased by the Town of Grafton

Workplace: an area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

1. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in a workplace.
2. Smoking is hereby prohibited in the Town of Grafton in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law").
3. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4 of this regulation.
4. Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 - a. Public Places or outdoor spaces, including but not limited to: parks, sports fields, playgrounds, Town beaches, pools, Grafton Common, Super Park, Town fields, or any place open for public use;
 - b. Public school buildings, school buses, school grounds;
 - c. Inns, Bed & Breakfasts, Hotels and Motels (including guest rooms);
 - d. Child care facilities and homes;
 - e. Taxis, public transportation and vessels, town-owned vehicles;
 - f. Automobile sales rooms, dealerships, repair shops, gasoline and service stations;
 - g. Bank and automatic teller machine (ATM) lobbies;

- h. Clinics and other health care facilities, chiropractic, physical therapy facilities;
- i. Hallways and indoor stairwells accessible to the public, common areas of apartment buildings and condominiums, elevators;
- j. Hair and nail salons, barber shops, cosmetology establishments;
- k. Health and fitness centers, massage, tanning establishments ;
- l. Indoor sports arenas, game arcades, indoor golf, golf courses;
- m. Laundromats, public rest rooms;
- n. Municipal and quasi municipal buildings and grounds, town owned vehicles;
- o. Museums and galleries, places of public worship;
- p. Retail establishments, grocery stores, supermarkets and convenience stores, restaurants, bars and lounges, retail tobacco stores, video rental stores;
- q. Smoking bars including cigar bars and hookah bars;
- r. Auditoriums, theaters or other facilities used for a stage production, play, lecture, musical recital, or other similar performance (except smoking which is part of said performance) halls and rooms used for public meetings or gatherings, clubs; and
- s. The area within fifteen (15) feet of an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen (15) foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product

SECTION 5: ENFORCEMENT

1. An owner, manager, or other person in control of a building, vehicle or vessel who violates this Regulation shall be penalized by a fine of:

- a. \$100 for the first violation;
- b. \$200 for a second violation occurring within twenty-four (24) months of the date of the first offense; and
- c. \$300 for a third or subsequent violation occurring within twenty-four (24) months of the second violation.

The Board of Health shall provide written notice to the permit holder of the intent to impose penalties. The notice shall contain the reasons for the penalties and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of notice. The permit holder shall have an opportunity to be heard and shall be notified of the Board of Health's decision and reasons in writing.

2. An individual or person who violates this Regulation by smoking in a place where smoking is prohibited shall be subject to a \$100 fine for each violation.

3. Each calendar day on which a violation occurs shall be considered a separate offense.

4. This Regulation shall be enforced by the Board of Health and its Agent.

5. Violations of Section 4 shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of

Massachusetts General Law. The disposition of fines assessed may be subject to Section 188 of Chapter 111.

6. If an owner, manager or other person in control of a building, vehicle or vessel violates this Regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Massachusetts Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Massachusetts Department of Public Health.

7. Any person may register a signed complaint to initiate an investigation and enforcement with the Board of Health.

SECTION 6: SEVERABILITY

If any paragraph or provision of this Regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this Regulation nothing in this Regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 8: VARIANCES


The Board of Health may vary any provision of these Regulations, that are not subject to state law, with respect to any particular case, when in its opinion, (1) the enforcement thereof would do manifest injustice, and (2) the applicant has proved that the same degree of protection can be achieved without strict application of the particular provision. All variances shall be considered at a Hearing by the Board of Health.

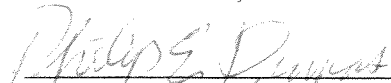
SECTION 9: EFFECTIVE DATE

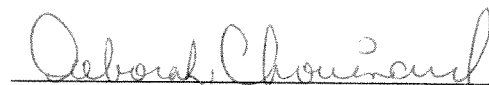
This Amended Regulation shall be effective as of **MARCH 1, 2012**.


GRAFTON BOARD OF HEALTH:


Karen Gwozdowski Gauvin, Chairman


Ernest W. Peters, Clerk


Philip E. Dumas, Member


Deborah A. Chouinard, Vice Chairman


Richard J. Kirejczyk, Member

A true copy,
Attest:


Maureen A. Clark, Town Clerk

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1/23/2012